

GULF OIL CORP.

IBLA 78-355  
79-200

Decided December 26, 1979

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding lease W 9178 (943d) to have expired on the lease expiration date and appeal from decision of Acting Director, U.S. Geological Survey, GS-118-O & G, denying approval for proposed communitization agreement.

Affirmed.

1. Appeals -- Oil and Gas Leases: Communitization Agreements -- Oil and Gas Leases: Termination -- Res Judicata

A notice of appeal from Geological Survey's failure to approve a communitization agreement must be filed within 30 days after appellant is served with the decision thereof or the doctrine of administrative finality generally bars consideration of the same issue in a later appeal.

2. Oil and Gas Leases: Communitization Agreements -- Oil and Gas Leases: Termination

Where approval of a communitization agreement has been denied, and other authorization is not present, production from an oil and gas lease within a state spacing unit cannot be attributed to another Federal lease, and absent production that lease expires at the end of its term.

APPEARANCES: Robert Hamernik, Esq., Tulsa, Oklahoma, for appellant; Robert G. Berger, Esq., Division of Energy and Resources, Office of the Solicitor, Washington, D.C., for the Department.

## OPINION BY ADMINISTRATIVE JUDGE GOSS

Gulf Oil Corporation has appealed from (1) a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated March 8, 1978, holding its lease W 9178 to have expired at the end of its primary term, appellant having failed to submit a communitization agreement prior to the lease expiration date, and (2) a decision of the Acting Director, Geological Survey (Survey), dated December 27, 1978, affirming a decision of the Acting Area Oil and Gas Supervisor denying approval for a proposed communitization agreement signed by all parties and submitted January 12, 1978. On motion of appellant, the appeals were consolidated. The appeals present essentially the same issue -- the propriety of a November 16, 1977, rejection of a proposed communitization agreement which was timely submitted but which was not then signed by all parties of record.

Appellant's lease W 9178 was issued December 1, 1967, for a term of 10 years and so long thereafter as oil or gas was produced in paying quantities. The lease included the NW 1/4 SE 1/4 of sec. 15, T. 35 N., R. 70 W., Converse County, Wyoming.

By a letter dated July 11, 1977, the District Engineer, Survey, advised appellant and also Continental Oil Company, Case-Pomeroy Oil Corporation, Chorney Oil Company, and Felmont Oil Corporation that:

According to our records, you are the lessees of record of the captioned Federal oil and gas leases. [W-9145-A, W-9178, W-16543]. These leases are subject to drainage by Petroleum, Inc. well No. 1, in the SE 1/4 NE 1/4 Sec. 15 \* \*

A communitization agreement covering the SE 1/4 of section 15 is required to comply with the 160 acre spacing (Cause No. 1, Order No. 9, Docket 120-76, dated November 29, 1976) [of the Wyoming Oil and Gas Conservation Commission]) for this area.

Please submit no later than August 11, 1977, your plans for communitizing this area and drilling a protective well in the SE 1/4 SE 1/4 of Sec. 15. If you decide not to drill, you must submit convincing economic, geologic, engineering, or other evidence that this well should not be drilled.

Communitization agreements among Federal oil and gas leases are provided for by 30 U.S.C. § 226(j) (1976) "when separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program \* \* \*." They allow for the "apportionment of production \* \* \* among the separate tracts

of land comprising the drilling or spacing unit" and production pursuant to the agreement is deemed production as to each lease.

As of July 11, 1977, the lessees of record in the lands proposed for communitization (the SE 1/4 of sec. 15) on July 11, 1977, were appellant, Continental, Case-Pomeroy, Chorney, and Felmont. By a letter dated August 2, 1977, appellant notified the District Engineer, Survey, that it planned to communitize the subject tract of land and drill a protective well on its lease W-9145A in SE 1/4 SE 1/4 of sec. 15, which adjoins lease W 9178. The well was completed for production on November 15, 1977.

On November 10, 1977, appellant submitted to Survey a proposed communitization agreement signed by appellant, Case-Pomeroy, Petroleum, Inc., Dyco Petroleum, and Felmont. The lessees of record on November 10, 1977, of land to be included in the agreement were appellant, Anadarko Production Company, Case-Pomeroy, Chorney, and Felmont. Continental's interest had passed to Anadarko and Chorney.

By a letter dated November 16, 1977, Survey returned the proposed communitization agreement unapproved citing in part the failure by two lessees of record, Anadarko and Chorney, to sign the agreement. Appellant did not appeal that decision, but obtained the required signatures and resubmitted the agreement on January 12, 1978. By a letter dated January 20, 1978, Survey again returned the agreement unapproved citing the expiration of lease W 9178 on November 30, 1977, "prior to Federal approval of the agreement." On March 8, 1978, BLM held that lease W 9178 had expired on November 30, 1977, prior to submission of a communitization agreement.

In its statement of reasons for appeal, appellant contends that Survey should have approved the proposed communitization agreement as originally presented or conditionally approved it "pending receipt of ratification by the remaining record [lessees]" because the signatory parties held a sufficient interest in the subject tract within the meaning of 30 CFR 226.8(a). That regulation provides that no "unit or cooperative agreement" would be approved "unless the parties signatory to the agreement hold sufficient interests in the unit area to give reasonably effective control of operations." (Emphasis added.) Appellant argues that it satisfied the regulation by virtue of the fact that it alone held leases for 120 of the 160 acres in the subject tract and that two of the remaining four lessees signed the agreement. Appellant argues that the signatory parties had "reasonably effective control of operations."

Furthermore, appellant contends that BLM based its decision on erroneous information from Survey, i.e., that no communitization agreement had been submitted prior to the lease expiration date, whereas an agreement had been submitted and then been denied approval by Survey.

Appellant also states that it acted with due diligence in obtaining the signatures of the remaining two lessees and resubmitting the proposed communitization agreement.

[1] As to Survey's November 16, 1977, denial of approval for appellant's proposed voluntary communitization agreement, which had been submitted prior to the lease expiration date but lacked the signatures of two record lessees, such a denial was not appealed within the period allowed under 43 CFR 4.411(a):

(a) A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office, where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing. \* \* \*

(b) No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken.

When appellant did not appeal Survey's November 16, 1977, denial of approval, the doctrine of administrative finality, the administrative equivalent of res judicata, properly bars consideration of the same issue in a later appeal. Ralph Dickinson, 39 IBLA 258 (1979).

It seems clear, however, that Survey was correct in denying approval. Appellant cites 30 CFR 226.8(a), but that regulation applies to those unit or cooperative agreements defined in 30 CFR 226.2.

The controlling regulation, 43 CFR 3105.2-3, provides that communitization agreements must be signed by or in behalf of "all necessary parties." While it might be argued the regulations should be read in pari materia, the proposed agreement as submitted was not intended to be effective until signed by all those to be included within the communitization. In its incomplete form, the proposed agreement was not subject to approval.

[2] In the absence of a communitization agreement, production from land within a state spacing unit cannot be attributed to a Federal lease within that spacing unit. Kirkpatrick Oil Company, 32 IBLA 329 (1977), sustained, Kirkpatrick Oil & Gas Company v. United States, Civil No. 77-1247-E (W.D. Okla. Nov. 26, 1979). The lease therefore expired at the end of its primary term in the absence of a producing or producible well. 30 U.S.C. § 226 (1976).

It is not relevant whether thereafter appellant acted with due diligence in resubmitting the proposed communitization agreement, for the lease in question could not be revived. Survey properly denied approval for the proposed communitization agreement submitted subsequent to the lease expiration date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Joseph W. Goss  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

